

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

109341

10,117

FILE: B-193245

DATE: May 10, 1979

MATTER OF: Industrial Writing Institute, Inc.

DIGEST:

1. GAO will not reevaluate proposals or independently assign them precise numerical scores; it will question agency's evaluation only upon clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes and regulations.
2. Inclusion of initial proposal in competitive range does not necessarily mean it is acceptable as submitted, and request for additional information should place offeror on notice of deficiencies.
3. In alleging bias, protester has burden of proof. Mere showing that evaluator was assistant to allegedly hostile official, with whom offeror had been unable to schedule appointment, does not prove that evaluator was biased. Absent evidence of bias, composition of evaluation team is within discretion of procuring agency.
4. Whether information submitted in technical proposal is sufficiently detailed to permit finding of acceptability is within subjective judgment of procuring officials.

Industrial Writing Institute, Incorporated (IWI) has protested the award of a contract under request for proposals (RFP) 153-78-HEW-OS, issued July 31, 1978, by the Division of Contract and Grant Operations, Office of the Secretary, Department of Health, Education, and Welfare (HEW).

The solicitation was for two courses in regulation writing and the management of regulation development, designed to enable HEW employees who attended them to

train others in these skills. On September 30, 1978, HEW awarded a \$39,024 contract, to be performed within four months, to Morgan Management Systems, Inc. (Morgan). IWI's request for a stop work order pending resolution of its protest was denied by HEW, and the agency advises us that it plans to exercise a \$4,125 option for a third course if funds are available.

We find that HEW had a reasonable basis for determining that Morgan was better qualified than IWI to perform the various tasks outlined in the scope of work. A detailed analysis follows.

According to the RFP, the contractor was to develop training materials incorporating a specific list of background materials: directives of the President and the Secretary with regard to regulation reform and management; the Administrative Procedure Act; model regulations and documents (a Notice of Intent, Notice of Proposed Rulemaking, Final Rule, and Preamble); selected HEW regulations appearing in the Code of Federal Regulations; and other materials to be selected by the contracting officer.

The contractor also was responsible for a curriculum plan covering four distinct areas: (1) writing, editing, and analysis; (2) the legal and administrative framework for regulation development; (3) planning and management of this process; and (4) teaching methods.

Proposals were to be evaluated on the following basis:

<u>Criteria</u>	<u>Numerical Weight</u>
Understanding of the scope of work	15
Proposed work plan	30
Appropriateness of schedule of events for deliverable items	20

Offeror's experience in related project activities	20
Offeror's experience based on qualifications of personnel	15

IWI argues that its proposal should have been rated significantly higher than Morgan's in understanding of the scope of work, experience with related projects, and experience of personnel. IWI alleges that HEW evaluators were prejudiced because none was a training specialist and one was an assistant to an HEW official whose relationship with IWI was "hostile." In addition, IWI argues that it was never informed of deficiencies in its proposal. Finally, IWI contends that it should have received the award because its price, \$31,200 for two courses and \$5,850 for the optional third, was lower than Morgan's.

As we have often stated, our Office will not reevaluate proposals or independently assign them precise numerical scores; we will question an agency's evaluation only if there is a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes and regulations. American Appraisal Associates, Inc., B-191421, September 13, 1978, 78-2 CPD 197.

Under the first evaluation criterion, understanding of the scope of work, HEW criticized IWI because it offered audiovisual materials and a manual from its standard commercial course, "Put It in Writing." Sample text, examples, and exercises from this manual were included in IWI's proposal, and the firm stated that they would be modified to meet HEW's needs. However, IWI did not specify how this would be done. According to one evaluator:

"The offeror ignored the depth and breadth of the RFP and promoted its own pre-packaged material. First, the offeror makes no attempt to adapt its pre-printed writing manual and material

to the needs of HEW. Second, offeror does not seem to be flexible in terms of his approach. Third, offeror lacks understanding of the regulatory management process."

Another evaluator noted that IWI treated the effective writing and the regulatory drafting portions of the course as separate functions, rather than as an integrated whole. Under this same criterion, Morgan scored high for understanding the need for flexibility and willingness to adapt its course to HEW's specific needs.

As for IWI's proposed work plan, one evaluator found:

"First, there are too many suggested deviations from the RFP specifications. Second, the work plan is too 'school-bookish' and likely to bore participants. It is also too legalistic in some respects. For example, there is a section on 'estoppel, change, and retroactive.' The manual plan is not satisfactory in that it contains material which is not very useful, for example 'How to Use Letters Sensibly and Organizing Letters and Reports.' * * *"

Evaluators again emphasized that Morgan's work plan

"indicated a willingness to review appropriate materials, consult with HEW's staff, and design a course tailored to the needs of HEW."

Under schedule for deliverable items, HEW downgraded IWI because it had not provided a detailed, grant-type chart of its proposed schedule, including planning and preparation time, which had been specifically requested. The evaluation panel concluded that if awarded the contract, IWI could prepare and present the course without HEW's input or approval.

Under the experience criteria, IWI rated high in both writing and legal drafting, but very low in management experience and regulatory analysis. Morgan, by contrast, scored high for its experience in management training at all levels of Government. Although Morgan's exposure to the regulatory process was limited, HEW evaluators believed that its personnel were "of such high caliber" that they could absorb a great deal of regulatory material before beginning the course.

Reviewing the actual proposals submitted by the two offerors, we find that HEW had a reasonable basis for its selection of Morgan. For example, it was reasonable to decide that an approach which separated basic writing principles from the specific problems of regulation drafting and development was not technically acceptable.

The RFP was very specific as to what was to be included under planning and management of the regulation development process. In its best and final offer, IWI indicated that its curriculum had been designed for regulation writers, not planner-managers. This emphasis could be changed if HEW wished, IWI stated; it awaited clarification. Asked how it planned to compensate for lack of management training experience, IWI merely argued that the term was "vague."

In our opinion, if IWI believed the scope of work was too broad or that clarification was needed, it should have objected or raised questions before making a best and final offer which omitted planning and management of regulation development--a substantial part of the work outlined in the RFP. It was reasonable for HEW to consider this omission.

As for other experience, although IWI submitted documents to our Office showing that in 1976 it had taught a course for regulation writers for the U.S. Office of Education, none of the Government contracts listed in its proposal was shown to have involved regulation writing.

IWI also has alleged that evaluators were prejudiced, and argues that one evaluator should have been disqualified because she was an assistant to an allegedly hostile official, with whom IWI had been unable to schedule an appointment. In alleging bias, the protester has the burden of proof; we do not believe IWI has met this burden. See Die Mesh Corporation-Reconsideration, B-189933, July 7, 1978, 78-2 CPD 15. Under the Freedom of Information Act, IWI asked HEW how many times the evaluator or the official had met with representatives of Morgan, either socially or in a business capacity. The contracting officer informed IWI that as far as he knew, the evaluator and Morgan had met only once, during negotiations. IWI has provided no evidence to the contrary.

As for composition of the evaluation panel, HEW indicates that at least one member was an expert in training of regulation writers. In any event, in the absence of evidence of bias, the composition of an evaluation team is within the discretion of a procuring agency. See Washington School of Psychiatry, B-189702, March 3, 1978, 78-1 CPD 176.

HEW states that in initial evaluations, IWI was considered unacceptable, but because its price was lower and because only two proposals had been received (although 37 firms had been solicited), the contracting officer included it in the competitive range. The fact that IWI's proposal was included in the competitive range did not necessarily mean that it was acceptable as submitted, but only that there was a real possibility that it could be improved without major revisions. See Proprietary Computer Systems, Inc., B-191731, September 20, 1978, 78-2 CPD 212 at 7. When a proposal lacks detail, a request for additional clarification, amplification, and discussion may be sufficient to place an offeror on notice that deficiencies exist. See Telex Computer Products, Inc., B-190794, July 31, 1978, 78-2 CPD 78. In this case, HEW asked IWI to answer 13 questions, in writing, in its best and final offer. We find IWI therefore should have been on notice of what HEW regarded as weaknesses in its proposal, and that HEW acted reasonably in downgrading the best and

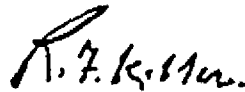
final offer when evaluators were not satisfied with responses to their questions. See Urbdata Associates, Inc., B-187247, April 20, 1977, 77-1 CPD 275.

In view of HEW's determination that the proposal was technically unacceptable, IWI's arguments regarding its lower price are irrelevant, since the firm was not eligible for award.

IWI has provided a detailed analysis, purporting to show that its proposal did not suffer from the weaknesses cited by HEW in its report to our Office. We find that IWI strongly disagrees with HEW's conclusions, see generally The Ohio State University Research Foundation, B-190530, January 11, 1979, 79-1 CPD 15, but has not shown that HEW was clearly unreasonable, abused discretion, or acted contrary to statute or regulation.

Rather, we find that HEW had a reasonable basis for finding that Morgan's proposal was acceptable. IWI consistently regarded the project as one which emphasized clear writing--to the exclusion of HEW's other concerns. It either ignored or did not understand planning and management of regulation development. In the judgment of the evaluation team, however, Morgan appeared to understand the full scope of work. Morgan's proposal had some shortcomings, as indicated by the final score of 66 out of 100 points; nevertheless, evaluators appreciated the firm's flexibility and willingness to meet with HEW staff members to discuss specific problems to be presented during the course. On this basis, they determined that Morgan was better qualified than IWI to perform the various tasks outlined in the solicitation.

The protest is denied.



Deputy Comptroller General
of the United States